

31188

SERVICE DATE - AUGUST 23, 2000

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-571 (Sub-No. 1X)]

Strouds Creek and Muddlety Railroad --Abandonment Exemption--in Webster and Nicholas Counties, WV

Strouds Creek and Muddlety Railroad (SC&M) has filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon an approximately 12.4-mile line of railroad between milepost BUE-0.0 at Allingdale and milepost BUE-12.4 at Muddlety Falls, in Webster and Nicholas Counties, WV.<sup>1</sup> The line traverses United States Postal Service Zip Codes 26205, 26208, 26691 and 26651.<sup>2</sup>

---

<sup>1</sup> Gauley River Railroad, LLC (Gauley River) subleased the line from CSX Transportation, Inc. (CSXT), which in turn leased the line from Strouds Creek and Muddlety Railroad. See CSX Transportation, Inc.--Renewal of Lease Exemption--Strouds Creek and Muddlety Railroad Company, Finance Docket No. 31373 (ICC served Dec. 21, 1988).

Gauley River and CSXT received discontinuance authority over the involved line segment in Gauley River Railroad, LLC--Abandonment and Discontinuance of Service--in Webster and Nicholas Counties, WV and CSX Transportation, Inc.--Discontinuance of Service--Webster and Nicholas Counties, WV, STB Docket No. AB-559 (Sub-No. 1X), et al. (STB served June 23, 2000).

<sup>2</sup> Under 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. SC&M, in its verified notice tendered for filing on July 19, 2000, indicated a proposed consummation date of September 9, 2000. Because applicant had failed to publish notice in the newspaper as required, the verified notice was not complete until August 3, 2000, when proof of newspaper publication was received at the Board and hence the notice was not deemed filed until then. Thus, the earliest possible consummation date is September 22, 2000. Applicant's representative has confirmed that the correct

(continued...)

SC&M has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 22, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>3</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>4</sup> and

---

<sup>2</sup>(...continued)  
consummation date is on or after September 22, 2000.

<sup>3</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay  
(continued...)

trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 5, 2000.

Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 12, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Francis G. McKenna, Anderson & Pendleton, C.A., Inc., 206 North Washington Street, Suite 330, Alexandria, VA 22314.

If the verified notice contains false or misleading information, the exemption is void ab initio.

SC&M has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 28, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

---

<sup>3</sup>(...continued)  
should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

<sup>4</sup> Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1000. See 49 CFR 1002.2(f)(25).

Pursuant to the provisions of 49 CFR 1152.29(e)(2), SC&M shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by SC&M's filing of a notice of consummation by August 23, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: August 16, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary